



Tobacco Products Control Act 2006

LICENSING OF SELLERS OF TOBACCO PRODUCTS

Anyone in Western Australia who sells a tobacco product either by retail sale, wholesale sale or indirect sale requires a licence.

An indirect sale is where the seller and the purchaser are not in the same place at the same time, for example, a sale by telephone, fax, mail order or Internet.

This brochure provides information about some of the requirements of the laws relating to licensing, tobacco displays and tobacco advertisements that are contained in the *Tobacco Products Control Act 2006* (the Act) and the *Tobacco Products Control Regulations 2006* (the Regulations).

A penalty of up to \$50,000 applies to an offence for selling tobacco products by retail sale without a licence.

HOW TO APPLY FOR A LICENCE

A licence cannot be issued to a person who is not at least 18 years of age.

An Application Guide (Form TC2) available from the Department of Health (DoH) contains important information about how to apply for a licence, details of fees and certain documents that must be provided with the application.

An Application Form (Form TC1A) must be submitted to the Department of Health, Tobacco Control Branch together with the prescribed fees and all other required documents and information.

GENERAL REQUIREMENTS OF A LICENCE

A licence is valid for 12 months from the date of issue and may be renewed for consecutive periods of 12 months. One licence must be obtained for each type of sale that a person engages in and a licence applies to 1 premise only.

Licence Must Be Displayed

The licence or a copy of it (same or larger size) must be displayed at the place in the premises where tobacco products are sold so that it is clearly visible to the public.

Licence Details on Business Stationery

Holders of a retailer's licence and an indirect seller's licence must record certain information on business stationery (each invoice, order, receipt or other record of purchase) when purchasing from a wholesaler. Information includes:

- the Licence number;
- the name of the licence holder; and
- the address of the premises specified in the licence.

If a retailer or indirect seller purchase tobacco products outside WA, then the name and address of the supplier must be recorded on each invoice, order, receipt or other record of the purchase.

Holders of an indirect seller's licence must also record the name and address of the purchaser on each invoice, order, receipt or other record of the sale. This requirement reduces access to tobacco products by minors.

Certain Records to Be Kept

The holder of a licence and any individual who at any time held a licence must keep certain records for 3 years:

Wholesalers - Records relating to invoices, orders or other records of the sale by the licence holder.

Retailers - Records relating to invoices, orders or other records of the purchase or receipt by the licence holder of a tobacco product intended for sale under the licence.



Transfer of a Licence

A licence cannot be transferred to another person but may be amended to apply to a different premise on application to the DoH and on payment of the prescribed fee and provision of other required information.

STAFF MUST BE TRAINED

The Act states-

“A person must not sell, supply or deliver a tobacco product or smoking implement to a person who has not reached 18 years of age”.

This means that it is illegal to sell a tobacco product or a smoking implement to a person less than 18 years of age.

A condition on every licence is that before a person is employed to sell tobacco products by retail, they must be provided training on the provisions of the Act about selling to minors, including the offence provisions, not selling tobacco products and smoking implements to minors, including vending machines if on the premises and to request acceptable proof of age if unsure if the person is not a minor.

A smoking implement means cigarette papers, rolling machine, pipe or anything else used to smoke tobacco but does not include matches or lighters.

Acceptable Proof of Age

Is any of the following that contains a photo of the person-

1. Current Australian driver's licence
2. Passport
3. Proof of age card issued under the *Liquor Control Act 1988*.

What Preventative Measures Can be Taken?

The following training must be provided to staff who sell tobacco products:

1. They are instructed not to sell a tobacco product or a smoking implement to a minor.
2. They are instructed to sight acceptable proof of age before selling tobacco products to a person unless they have no reason to believe that the person is not at least 18.
3. They are informed about provisions of the Act about supply to minors.
4. They are warned about being charged with offences for supplying to a minor.

Who is Responsible if a Tobacco Product or Smoking Implement is Sold to a Minor?

The person who sold the tobacco product is responsible however, the Act provides that the licence holder is also responsible and may be charged for an offence by an employee. In addition to prosecution, retailers also risk having a licence suspended, revoked or disqualified.

A decision to change the status of a licence including suspension or cancellation may be appealed to the State Administrative Tribunal.

ONE PLACE OF SALE ONLY

Tobacco products must only be sold at one place in any premises, which is the place where tobacco products are displayed. For example one checkout aisle or one counter is one place. Vending machines are not included in this requirement - see information under heading “Vending Machines”.



RESTRICTIONS ON DISPLAYING TOBACCO PRODUCTS

Restrictions apply to the size and specifications of tobacco product displays, the number of packages that can be displayed and the manner in which they can be displayed.

- Only 1 m² of surface area of tobacco products can be displayed.
- The 1 m² must be contained within an area that has a perimeter not greater than 5 m.
- Only 150 different brands and kinds of tobacco product can be displayed.
- Only one of each brand and brand variants can be displayed, including cigarettes, cigars etc.
- Only tobacco products that are available for sale can be displayed.
- The display cannot be highlighted or illuminated in anyway to make it stand out from its surroundings.
- Only 1 display is permitted, although up to 2 cigar cabinets may also be displayed separately, however only the transparent glass area of these is included in the 1 m².
- Different requirements exist for cigar cabinets in liquor licensed premises - see Page 6 - "LIQUOR LICENSED PREMISES & MINE AMENITY AREAS".
- Confectionary or other products designed or marketed specifically for children must not be displayed within 1 m of a tobacco products display (some flexibility is conditionally allowed - contact the DoH for further information).

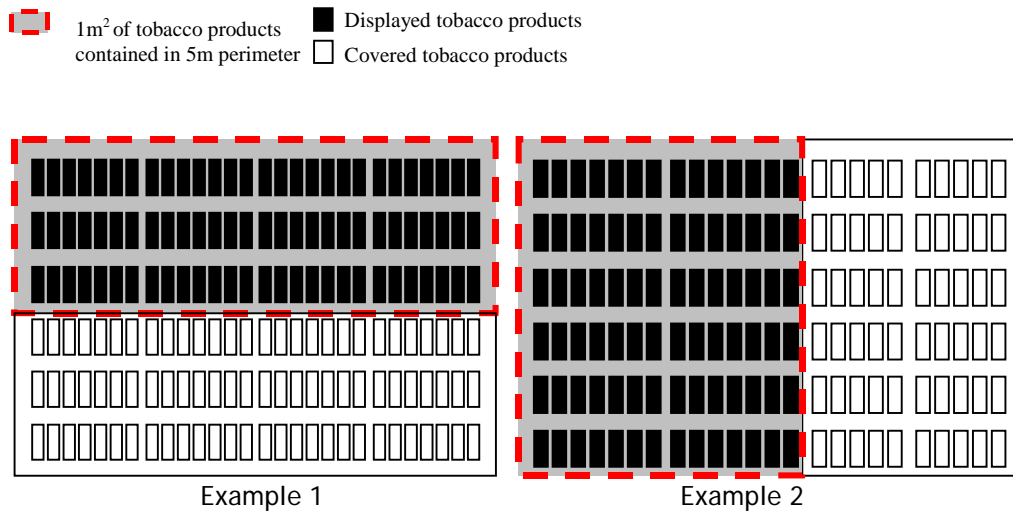
The display must be located behind and not on a counter or other facility across which customers are served or above the counter if the bottom of the display is at least 1.7 m above the floor level on the seller's side.

The Act provides for larger displays for some retailers who meet certain requirements.

- If 50% or more of the average gross turnover of the business for 2004-2005 was derived from the sale of tobacco products - 3 m² display area - which must be contained within an area having a perimeter not greater than 8 m and the display must not be visible from outside the premise; or
- If 80% or more of the average gross turnover of the business for 2004-2005 was derived from the sale of tobacco products - an unlimited display area is conditionally allowed however, only 1 m² can be visible from outside the premise.

Contact the DoH for more information.

The following diagrams summarise the restrictions applying to a tobacco products display for a normal retailer.





CERTAIN TOBACCO PRODUCTS CANNOT BE DISPLAYED

It is an offence to display certain tobacco products including:

- A carton or part of a carton;
- A package that contains cigarettes that, when smoked, have a flavour or aroma of -
 - Any kind of fruit; or
 - Chocolate, vanilla, caramel, coconut, mint (but not menthol), or any other flavour used in the production of confectionary.
- A package displaying a word or set of words, picture, sign, symbol or other visual image (including a colour or scheme of colours) suggesting that the package contains cigarettes of a kind mentioned above.

Examples of the above are DJ Mix, Peel, Pink Elephant, Black Devil, Sobranie Cocktail and Springwater Vanilla.

- A package that is designed, or capable of being split into 2 or more portions each containing less than 20 cigarettes (these packages also do not comply with Commonwealth labelling laws and are illegal to sell).

INFORMATION/PRICE SIGNS AND PRICE TICKETS

Any information about the availability or price of tobacco products must comply with certain requirements and can only be provided on an information sign, price ticket or a price list.

It is an offence to display a sign outside a shop indicating that tobacco products are available.

Requirements for Information Signs:

1. Can only be displayed behind a counter and are not permitted outside shops.
2. Must not contain information other than:
 - a) The product lines available;
 - b) The types of packages available (if a product is sold in more than 1 type of packaging, eg soft pack and flip top);
 - c) The country of origin; and
 - d) The price or prices of the available tobacco product.
3. Must not contain any information about a tobacco product that cannot be displayed except cartons.
4. Must display an approved Quitline logo that is at least 2 cm in height (available from the DoH).
5. Must not exceed 1 m² in size.
6. There may be more than 1 sign but they all have to be the same size and the total area of all signs must not exceed 1 m².
7. Must have a white background with black lettering or a black background with white lettering. No other colouring is permitted;
8. Must only have information about product lines that are available for sale.
9. Must only contain letters and numbers of the same font (writing style), which do not exceed 1cm in height; and
10. Must not present any information about a product line to make it stand out from information about any other product line.

Information Signs for Cigar Cabinets

In addition to the signage above there may be a sign giving information about the availability and price of cigars in a cigar cabinet if -

1. The sign is affixed to or located immediately next to the cigar cabinet.
2. This sign has an approved 'Quitline' logo (at least 1 cm height) attached and complies with all other requirements of an information sign as detailed above (stickers available from the DoH).
3. The size of the sign is not bigger than A4.



Requirements for Price Tickets

1. A price ticket must not exceed 35 cm² size and all tickets must be the same colour combination:
 - a) White background with black lettering; or
 - b) Black background with white lettering; or
 - c) The same colour lettering and the same colour background as the majority of other price tickets in the premises; and
 - d) Must not contain fluorescent colours.
2. All price tickets must have the same size lettering and numbers for the product line information not exceeding 8 mm height.
3. The lettering and numbers for the product line information must be the same size on all price tickets.
4. There is no size limit on the size of the price information but all tickets must have the same size price.

Price Lists for Cigars

A cigar price list is permitted, however it's size must not exceed A4, it must be made available only at the request of a customer and is not to be taken away by the customer.

What is a Cigar Price List?

A price list that provides information about the availability and price of cigars only in a cigar cabinet or humidified room.

Restrictions on Cigar Price Lists

- If it comprises more than one page, they must be bound together; and
- An approved 'Quitline' logo (minimum size 1 cm) must be displayed at the top of each page of the price list (stickers available from the DoH).

A retail price list is not allowed in other circumstances.

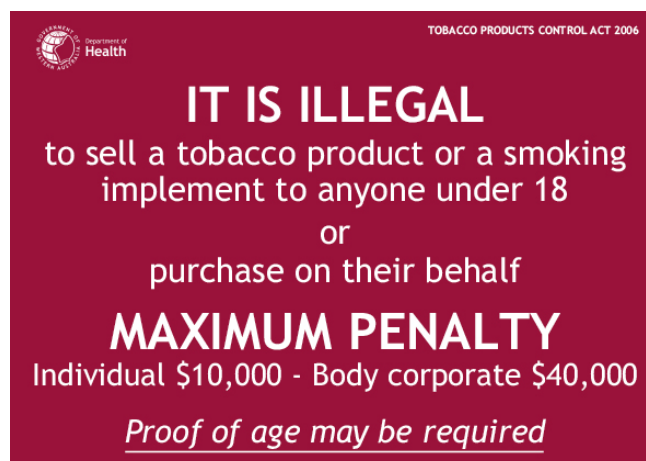
COMPULSORY WARNING SIGNS

Two warning signs must be displayed with the tobacco products display and on vending machines.

The signs are provided by the DoH when a licence is issued. Additional signs are available on request.

Warning Sign 1 - Supply to Minors

The following A5 sign is required to be displayed above the height of the counter at the place of sale and must be clearly visible to a customer at the time of purchasing tobacco products.





Warning Sign 2 - Health Warning Sign

Either one of the following health warning signs is required to be displayed immediately adjacent to the tobacco products display so it is clearly visible to a customer when purchasing a tobacco product.



Cigar Cabinets and Humidors

A cigar cabinet or humidified room must display the following A5 sign



Portable cigar cabinets having a volume not exceeding 50 cm³ size can have a smaller sign - 105 mm x 74 mm

LIQUOR LICENCED PREMISES & MINE AMENITY AREAS

Display of Cigars

A maximum of 2 cigar cabinets in a liquor licensed premises may be located on either side of a counter or other facility across which customers are served, however the total area of all tobacco products that can be displayed in the premises is 1 m², including the transparent glass area of cigar cabinets.

Vending Machines

Vending machines are a potential source of tobacco products to minors. Reducing access to tobacco products by minors is a key objective of the *Tobacco Products Control Act 2006*, which contains a range of provisions to prevent young people taking up smoking.

Is a Licence Required to Sell Tobacco Products From a Vending Machine?

YES - A vending machine is a method of retail sale and the person in whose premises the vending machine is located is required to hold the licence.

Vending Machines are Restricted

Vending machines can only be located in a liquor licensed premise or at a mine amenity. Unless the vending machine can't be operated without owner/staff assistance, then the operation of the vending machine must be supervised at all times during which the premises are open to the public.

A maximum of 2 vending machines only are allowed.



Sale (including supply) to Minors

The licensee must not allow any person under the age of 18 years to purchase tobacco products from a vending machine. All staff working in an area where a vending machine is located must be provided training.

Staff Training

All licensees must provide training to staff on the sales to minor’s provisions of the Act relating to vending machines.

Employees Must be Instructed

1. To take reasonable steps to prevent minors from accessing tobacco products from a vending machine; and
2. To sight acceptable proof of age before allowing anyone to use the vending machine if there is reason to believe that the person is under 18.

Warning Signs

A vending machine must display 2 signs:

1. A health warning sign; and
2. A Supply to minors warning sign.

The signs are the same as those shown on the previous page and must be easily visible to a person purchasing a tobacco product from the vending machine.

If the vending machines is too small to display the A4 size health warning size , an A5 size may be displayed.

USE OF FACSIMILES (pictures) OF TOBACCO PRODUCTS

Pictures of tobacco products are permitted on vending machines, dispensing units and cigar price lists as follows:

- No more than 4 facsimiles of a particular product line are displayed in the premises.
- No more than 75 facsimiles in total are displayed in the premise.
- The total surface area of all facsimiles must not exceed 1 m².
- Facsimiles are not greater than 50% of the actual size of the front face of the package.
- Only facsimiles of the front face of cigarette packets can be displayed, not facsimiles of cartons (duty free shops at an airport exempt);
- Facsimiles cannot be used on dispensing units if cigarettes are displayed in the premises.

PENALTIES

Unless otherwise stated, the penalty for all offences under the Act is a maximum fine as follows:

Offence	Individual	Body Corporate
1 st offence:	\$10,000	\$40,000
2 nd or subsequent offence:	\$20,000	\$80,000

Disclaimer

“The information contained in this brochure has been produced as a guide only. It is not intended to be comprehensive and does not take the place of the *Tobacco Products Control Act 2006* or associated regulations. Similarly, it is not intended to be, nor should it be relied upon as a substitute for legal advice. The State of Western Australia expressly disclaims liability for any act or omission done in reliance of the information contained in this brochure or for any consequences, whether direct or indirect, of any such act or omission.”

Delivering a Healthy WA



CONTACT US

For more information, contact the Department of Health, Tobacco Control Branch:
www.health.wa.gov.au/tobaccocontrol

PO Box 1335
West Leederville WA 6901

Ph: 1300 784 892
Fax: 08 92429634

Email: tcb@health.wa.gov.au

Official versions of the Act and Regulations can be obtained from the State Law Publisher:
<http://www.slp.wa.gov.au/>

